

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 61
SPONSOR(S): Machek
TIED BILLS:

Recovering, Towing, or Storing Vehicles and Vessels
IDEN./SIM. BILLS: SB 1006

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Infrastructure</u>	<u>7 Y, 0 N</u>	<u>Miller</u>	<u>Miller</u>
2) <u>Economic Expansion & Infrastructure Council</u>	<u></u>	<u></u>	<u></u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Florida regulates many aspects of the recovery, towing, and storage of motor vehicles. For example, state law allows a wrecker company that recovers, tows, or stores a vehicle to impose a lien against the vehicle for those costs. If the charges remain unpaid, the company can sell the vehicle or vessel at public auction. The company is responsible for sending notice of the pending sale within a specified number of days to the vehicle or vessel's owner via certified mail with a return receipt.

Current law also directs the Florida Highway Patrol (FHP) to establish a wrecker operator system and establish a maximum rate schedule that wrecker companies contacted by troopers can charge their customers; however, counties and municipalities may set different rates for wrecker operators contacted by local law enforcement.

The bill modifies and clarifies certain aspects of these statutes. Specifically, the bill:

- Provides that in those counties and municipalities without locally adopted towing rates, the FHP rate schedule shall apply.
- Requires FHP to review its towing rate schedules biennially to determine if the existing rates are equitable.
- Eliminates the return receipt requirement for notification letters sent by wrecker companies to vehicle owners or other lienholders. (Companies must retain some evidence of mailing the letters and must provide such documentation to owners, lienholders, or any other person involved in a legal action, if requested.)
- Caps the administrative charge assessed by wrecker companies operating in counties or cities without a towing-rate ordinance at the lesser of \$100 or 30 percent of the unpaid recovery, towing, and storage fees.
- Makes technical and grammatical changes to the existing laws.

HB 61 does not appear to have a fiscal impact on state agencies or to local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Towing Rates

Counties and municipalities are authorized by ss. 125.0103 (1) and 166.043 (1), F.S., respectively, to establish rates and maximum fees for the recovery, towing, and storage of motor vehicles and vessels by wrecker companies.

Pursuant to s. 321.051, F.S, the Florida Highway Patrol (FHP) has established a system to allocate towing requests among wrecker operators to remove wrecked, disabled, and abandoned vehicles from roadways. FHP also sets maximum towing and storage rates for situations in which troopers contact a wrecker company to remove vehicles and rates for the area have not been established by a local government. These rates generally are set by the regional FHP troop commanders based on the charges allowed by local governments and the wrecker companies' costs. The rates are periodically reviewed and updated at the troop commanders' discretion. Wrecker companies contacted by FHP may charge a maximum of \$30 for the preparation, filing, or mailing of notification letters for vehicles stored more than 24 hours.¹

Several local ordinances or resolutions allow wrecker companies to collect administrative fees to cover postage, title search, and other related expenses. The amount and timing of these administrative fees vary widely. For example, the City of Orlando allows wrecker companies to charge an administrative fee of \$50 after the first 48 hours the vehicle or vessel is in their possession, if they have complied with statutory requirements to notify owners and lienholders. Broward County allows wrecker companies to charge, after 24 hours, an administrative fee of \$30 plus all actual costs to obtain title information and provide notice to the owners or lienholders. The city of Tallahassee allows wrecker companies, which have mailed a certified letter to the owner, lienholder, or insurance company as required by state law, to assess an administrative fee of \$33 plus postage and any out-of-state charges 3 days after the vehicle was towed but not until the Return Receipt postcard, fax, or email has been received.

According to the Professional Wrecker Operators of Florida, there have been reports of wrecker companies charging upfront administrative charges in excess of \$100 to customers in counties or cities without local fee ordinances or in circumstances where the FHP rate schedule does not apply.

Notification

Section 713.78, F.S., provides that when a wrecker company tows a vehicle, the company has a lien against the vehicle for payment of reasonable recovery, towing and storage fees. Within seven business days, the company must determine the name and address of the registered owner, all lienholders, and the vehicle's insurer by searching records held by the Department of Highway Safety and Motor Vehicles (DHSMV) or the corresponding agency in other states.

Within those seven business days, the wrecker company must send a notice by certified mail with a return receipt requested to the owner, lienholders, and insurance company. The notice must include:

- A statement that the company has taken possession of the vehicle;
- That a lien is claimed;

¹ Ch. 15B-9.010(4), Fla. Admin. Code. This rule was last amended in 1992.

- The amount of the towing and storage charges accrued;
- That the lien claimed is enforceable by law;
- That the owner or other lienholder is entitled to a hearing to determine whether the owner's vehicle was wrongfully taken; and
- That the vehicle or vessel which remains unclaimed, or for which recovery, towing, or storage charges remain unpaid, may be sold free of all prior liens after 35 days if the vehicle is more than 3 years old, or after 50 days if the vehicle or vessel is 3 years of age or less.

If unable to locate the name and address of the owner or lienholder after a good faith effort, the company must notify the local public agency by certified mail indicating the lack of ownership information. Vehicles remaining unclaimed may be sold at public auction. If the date of the auction was not included in the initial notification to the owner and any lienholder, a new notice must be given by certified mail with a return receipt to the owner or lienholder no later than 15 days before the sale.

According to the U.S. Postal Service website, certified mail service gives the person or entity mailing the letter a receipt stamped with the date of mailing, a unique bar-code number allowing the mailer to verify delivery online, and assurances that the recipient's signature is obtained at the time of delivery then maintained by the local Post Office. This service costs \$2.40 in addition to the regular 39 cents postage. Additionally, senders can request a copy of the signature record. This return receipt service provides tangible proof that a letter or package was delivered and that the recipient signed for it. The return receipt can be in the form of a green postcard (at an extra cost of \$1.85), or as a PDF attachment via email or by fax (for \$1.35 extra). The charge is higher if the return receipt service was requested by the sender after mailing the letter.

Effect of Proposed Changes

The bill specifies that in those counties or municipalities without an adopted local ordinance establishing recovery, towing, and storage fees, the FHP's rate schedule applicable to that region of the state shall be used. In addition, the FHP is directed to biennially review its rate schedules in June of the appropriate year to determine whether its rates are equitable.

The bill deletes the requirement that wrecker companies receive a formal return receipt from the postal service, although they must continue to use certified mail. Notwithstanding the removal of the return receipt requirement, wrecker companies must be able to provide proof that the notification letters were mailed to the affected parties upon their request.

The bill authorizes wrecker companies to charge a fee for administrative costs on top of the recovery, towing, and storage fees for the vehicle. The bill caps the charge for administrative costs at either the amount imposed by a local ordinance, or in the absence of a local ordinance, the lesser of \$100 or 30 percent of the unpaid recovery, towing, and storage charges.

C. SECTION DIRECTORY:

Section 1: Amends s. 125.0103, F.S., to specify the conditions under which the FHP's established towing rates become the default rates within certain counties.

Section 2: Amends s. 166.043, F.S., to specify the conditions under which the FHP's established towing rates become the default rates within municipalities.

Section 3: Amends s. 321.051, F.S., to establish a biennial review of FHP's towing rates.

Section 4: Amends s. 713.78, F.S., to require proof of mailing to all parties; deletes references requiring the use of return receipt mail; adds unpaid administrative costs to the charges that may be recovered in a sale of unclaimed vehicles; authorizes administrative costs and provides for limitations on such charges; and makes technical changes throughout.

Section 5: Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. The provisions establishing FHP rate schedules in counties and municipalities without locally adopted wrecker rates could impact some wrecker companies positively or negatively, depending on what they are currently charging. In addition, wrecker companies will save \$1.85 per notice mailed by certified mail based on avoiding the cost of the return receipt that must be requested under current law.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds, reduce the percentage of state tax shared with counties or municipalities, or reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not make any specific additional grant of rulemaking authority. FHP is currently authorized to set towing and storage rates for vehicles.² These rates "shall not be considered rules for the purpose of chapter 120; however, the department shall establish by rule a procedure for setting such rates."³

² Section 321.051(2), F.S.

³ Id.

C. DRAFTING ISSUES OR OTHER COMMENTS:

As used in Section 4 of the bill, the term “administrative costs” is not defined. Rule 15B-9.010, F.A.C., identifies the “preparation, filing, and mailing” of the statutorily required notification but does not specifically define these costs as “administrative costs.”

D. STATEMENT OF THE SPONSOR

Currently, F.S. 713.78 requires wrecker companies that tow and store vehicles to send certified letters, return receipt requested, to the vehicle owner, lienholder, insurance company and anyone of interest.

The average vehicle will need to have 2-3 letters sent with some requiring more. The cost to the towing company for postage is \$4.64 per letter (this is \$0.39 for postage, \$2.40 certified mail, and \$1.85 return receipt requested).

With the electronic tracking ability of the USPS, the return receipt card is no longer needed. Removing the requirement for the return receipt requested portion will save the business owner \$1.85 per letter. A small towing company will save over \$2,000.00 yearly in postage costs, and larger operations will save even more.

This is a benefit to small business owners with no change in service to the vehicle owner.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

This bill was considered by the House Infrastructure Committee on March 19, 2007. The committee adopted an amendment which provided that administrative costs authorized by the bill are for the cost to the wrecker company of notifying the owner, lienholder, insurance company and other persons of record who have an interest in the vehicle of the claim of lien. The bill was then reported favorably with one amendment.